SINGLE BENCH

IN THE HIGH COURT OF JUDICATURE AT BILASPUR, (C.G.).

WRIT PETITION NO. 4704 OF 2005.

WRIT PETITION UNDER ARTICLE 226/227 OF CONSTITUTION OF INDIA.

PETITIONER .. NAYEEM KHAN,
S/o Karamat Ullah Khan,
Aged 28 years,
R/o Korea, MANENDRAGARH (CG).

VERSUS

RESPONDENTS .. 1. STATE TRANSPORT APPELLATE TRIBUNAL, STATE OF CHHATTISGARH, RAIPUR(CG)
2. REGIONAL TRANSPORT AUTHORITY CHHATTISGARH, RAIPUR.
3. SECRETARY, R.T.A., BILASPUR, District BILASPUR (CG)
4. BASANT ROADWAYS, Through Partner Arvind Kumar Agrawal, Seth Basant Lal Marg, Ambikapur, (CG).

4777/05
Presented by Sri A.R. Shrivastava
Dated 15/9/05

RECEIVED-COPY
15.9.05
CLERK to A.G. BILASPUR

DETAILS OF PETITION :

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... W.P. 4704/ ..... **सन् 200** 5

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

20-10-2005

Mr. B.K. Rawat, counsel for the petitioner.

Mr. Yashwant Singh Thakur, Govt. Advocate for the State/ respondents No.2 & 3.

Mr. B.P. Gupta, counsel for respondent No.4.

By this writ petition under Article 226/227 of the Constitution of India, the petitioner has questioned the legality, propriety and correctness of the order dated 8-9-2005 passed by the State Transport Appellate Tribunal, Chhattisgarh, Raipur (for short 'the STAT'), in Revision No.360/2004, whereby learned STAT allowing the revision filed by respondent No.4 herein, cancelled permit No.1814/B/03 granted in favour of the petitioner herein by the Regional Transport Authority, Raipur (for short 'the RTA'), vide order dated 27-9-2003 (Annexure P-1) for plying vehicle between the route from Khongapani to Ambikapur and back.

Brief facts leading to filing of this writ petition are that the petitioner herein filed an application for grant of permit from Manendragarh to Raigarh and back vide his application dated 10-4-2003 (Annexure R-4/2). The substance of the said application was published on the notice board on 28-8-2003 and hearing was fixed on 3-9-2003 in which as many as four persons namely, Fazal Haq, Mohd. Farooq, respondent No.4 herein, & one Yogesh Pratap Singh filed their objections and the matter was heard. The objection of respondent No.4 herein was regarding timing, as the timing of the permit of respondent No.4 was clashing with the timing asked for by the petitioner herein. Respondent No.4 was already the permit holder for the route from Ambikapur to Manendragarh. Starting time of respondent No.4 was 13:10 hours from Ambikapur, 16:10 hours from Baikunthpur, and arrival at

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... W.P. 4704/ ..... **सन् 2005**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Manendragarh was 18:30 hours, whereas the timing asked for by the petitioner herein was 13:10 from Ambikapur, 16:10 from Baikunthpur and 19:00 arrival at Manendragarh. However, after the arguments were over, the petitioner herein moved another application dated 11-9-2003 (Annexure R-4/3) asking for the permit from Khongapani to Ambikapur. The RTA observed that in view of the new proposed route by the petitioner herein, the objection raised by the four transporters stands removed and as the petitioner herein is already plying the vehicle from Khongapani to Ambikapur on a temporary permit, no tax is outstanding against him, therefore, the permit is granted in his favour. Aggrieved by the said order dated 27-9-2003, respondent No.4 herein filed a revision before the STAT, Raipur, who allowed the revision vide the impugned order.

I have heard learned counsel for the parties.

Mr. B.K. Rawat, learned counsel for the petitioner argued that since the permit was granted to the petitioner on a new route Khongapani to Ambikapur, therefore, respondent No.4 herein can have no grievance, as such, he had no locus to file the revision against the order granting permit in favour of the petitioner. Other point raised by Mr. Rawat is that the vehicle on which the permit was granted to respondent No.4 herein was already sold by him, therefore, on this ground also respondent No.4 had no right to challenge the grant of permit in favour of the petitioner. He very frankly admitted that on the day i.e. on 27-9-2003 when the permit was granted in favour of the petitioner from Khongapani to Ambikapur, no route was formulated by the State Government under Section 68 (3) (ca) of the Motor Vehicles Act, 1988 (for short 'the Act'), but, thereafter, vide notification dated

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... W.P. 4704/ **सन् 2005**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

14th June, 2004, the route has been formulated, as such, the matter can be remitted to the STAT or the RTA to consider the case of the petitioner afresh.

On the other hand, Mr. B.P. Gupta, learned counsel for respondent No.4 submitted that as the permit granted in favour of the petitioner was overlapping with the permit of respondent No.4 from Manendragarh to Ambikapur and only the area which was not within the permit of respondent No.4 was Khongapani to Manendragarh and in between Ambikapur to Manendragarh, particularly, Ambikapur & Baikunthpur, timing of the permit of the petitioner as well as respondent No.4 herein was same, therefore, that was affecting the interest of respondent No.4, as such, he had locus to file the revision. He further submitted that the application Annexure R-4/3 was taken by the RTA on 11-9-2003 on the back of respondent No.4. The arguments were already heard on 3-9-2003 and no opportunity to raise objection was granted to respondent No.4 regarding the timing of permit granted in favour of the petitioner herein.

Having heard learned counsel for the parties, I have perused the impugned orders and record.

In this connection, it would be profitable to have a glance over the relevant provisions of the Act. Section 2 (38) of the Act defines "route" which says that *"route" means a line of travel which specifies the highway which may be traversed by a motor vehicle between one terminus and another.* Section 70 of the Act provides for moving an application for stage carriage permit. Sub-section (1) of Section 70 envisages among other conditions that "an application for a permit in respect of a stage carriage or as a reserve stage carriage shall, as far as may be, contain the following particulars,

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... W.P. 4704/ ..... **सन् 2005**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

namely, (a) the route or routes or the area or areas to which the application relates".

Section 72 of the Act is with regard to grant of stage carriage permits which envisages that

> "subject to the provisions of Section 71, a Regional Transport Authority may, on an application made to it under Section 70, grant a stage carriage permit in accordance with the application or with such modifications as it deems fit or refuse to grant such a permit:
>
> Provided that no such permit shall be granted in respect of any route or area not specified in the application".

Section 80 of the Act defines the procedure in applying for and granting permits. Sub-section (1) of Section 80 envisages that "an application for a permit of any kind may be made at any time". Sub-section (2) of Section 80 envisages that "a Regional Transport Authority shall not ordinarily refuse to grant an application for permit of any kind made at any time under this Act.

Section 68 (3) (ca) of the Act is with regard to formulation of route by the State Government and it envisages that "Government to formulate routes for plying stage carriages".

Perusal of the above provisions makes it clear that in the first instance without formulation of route by the State Government under Section 68 (3) (ca) of the Act, no transport authority is entitled to grant any kind of permit. Admittedly, in this case, no route was formulated till the date i.e. on 27-9-2003 when the permit was granted in favour of the petitioner herein. The said route was formulated only vide notification dated 14-6-2004. Therefore,

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... W.P. 4704/ **सन् 200** 5

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —5—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the order granting permit in favour of the petitioner by the RTA vide order dated 27-9-2003 was illegal.

Now, coming to the point that whether the RTA was within its right to grant permit in favour of the petitioner on the basis of the application dated 11-9-2003, it is admitted position that the petitioner herein applied for grant of permit from Manendragarh to Raigarh vide application dated 10-4-2003, substance of the same was published on the notice board on 28-8-2003, and hearing in respect of that application was held on 3-9-2003 against which the four transporters including respondent No.4 herein raised their objections regarding timing. However, when the petitioner herein came to know at the time of hearing that the objections raised by respondent No.4 herein is of some substance, which may likely to jeopardize his claim, and when the hearing was concluded on 3-9-2003, thereafter, on 11-9-2003 he moved another application surreptitiously before the RTA changing the route from Raigarh-Manendragarh to Khongapani-Ambikapur. Without hearing on that application to any of the objectors, the RTA was pleased to oblige the petitioner in a manner showing that if the renewed application is allowed and permit is granted on that basis, then nobody will have any grievance against such permit. But unfortunately for the petitioner herein, respondent No.4 still remained unsatisfied and moved revision before the STAT showing that the starting timing of the permit granted in favour of the petitioner herein and respondent No.4 herein is same from Ambikapur - 13:10 hours, Baikunthpur – 16:10 hours, and the only difference was that of arrival time of respondent No.4 herein which was 18:30 at Manendragarh, whereas, the arrival time of the petitioner herein was 19:00. The revision was ultimately allowed by the STAT.

SP/FS/2005 - 20,000

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... W.P.4704/ **सन् 2005**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

It is true that under the amended provisions of the Act, grant of permit has been liberalized and the requirement of the provisions of Sections 47 & 57 of the old Act has been done away with, but on the question of timing, the principle of natural justice comes into play, as if the same timing is fixed for more than one operator, then such timing is likely to effect the interest of the operator already plying his vehicle, it may also not the healthy competition and in the interest of the general public also. Therefore, to this extent while granting permit, the RTA or the STAT is required to take into consideration the timing factor.

In this case, as has been mentioned above, respondent No.4 herein was already plying his bus between Ambikapur & Manendragarh, and the timings of permit granted in favour of the petitioner herein from Ambikapur was same up to Baikunthpur. Therefore, the interest of respondent No.4 herein was bound to be affected. The procedure adopted by the RTA cannot be said to be in consonance with the provisions of the Act, as the word 'route', which has been defined under Section 2 (38) of the Act, is "between one terminus and another", and for which the petitioner herein had already applied for. The other application filed by him after conclusion of the argument was for a new route i.e. from Khongapani to Ambikapur, which ultimately came to be formulated by the State Government vide notification dated 14th June, 2004.

Section 70 (1) (a) of the Act also envisages that the party applying for the stage carriage permit is required to mention the route or routes or the area or areas to which the application relates, for which the petitioner had already moved an application. As per the proviso to Section 72 (1) of the Act, which envisages that no such permit shall be granted in respect of any

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... W.P. 4704 / **सन् 2005**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

route or area not specified in the application, the RTA was not entitled to grant permit based on the new application, the substance of which was never published and parties were never put to notice for hearing on that application, and the route mentioned in the new application was different from the earlier application on which the arguments were heard. Therefore, on this ground also the action of the RTA was not in consonance with the provisions of the Act, as the interest of respondent No.4 was affected on account of the timing of the permit granted in favour of the petitioner herein. In the circumstances, respondent No.4 has locus to move revision before the STAT.

Now, coming to the point raised by Mr. B.K. Rawat that the vehicle has already been sold by respondent No.4, therefore, he has no right to move revision, Mr. Rawat developed this argument based on the permit Annexure R-4/4 issued in favour of respondent No.4 in respect of the vehicle bearing registration No.CG-15/ZA-0787, and the permit Annexure P-3 issued in favour of Arun Kumar Lath in respect of the same vehicle on 8-9-2003. Based on these two documents it is not safe to hold that respondent No.4 herein has transferred the vehicle. In order to substantiate this argument, the petitioner ought to have filed other documents regarding the transfer of vehicle by obtaining copies from the RTA Office. By merely mentioning vehicle number on the two permits, it cannot be treated that the vehicle has been transferred.

Moreover, Mr. B.P. Gupta argued that the permit holder is always entitled to change the vehicle on the permit with the permission of the transport authority and for that purpose for the route in question, respondent No.4 has already purchased a new bus, and papers have already been filed before the RTA for change of the vehicle. The permit, which is existing in the

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... W.P. 4704/ **सन् 2005**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —8—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
—	name of respondent No.4 herein has not so far been cancelled, therefore, he was within his right to challenge any action of the RTA, which affects the interest of respondent No.4 in respect of the route granted in favour of respondent No.4. For the foregoing reasons, I am of the considered opinion that the petitioner has no case to interfere with the revisional order passed by the STAT and this writ petition is devoid of any merit, same is liable to be dismissed, and it is hereby dismissed. **Sd/-** **L.C. Bhadoo** **Judge**	
Soma		